IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES LAWSON	**:**	**CIVIL ACTION**
	:	
v.	**:**	
DONALD T. VAUGHN	**:**	**NO. 06-cv-3528**

MEMORANDUM AND ORDER

The Antiterrorism and Effective Death Penalty Act of 1996 (commonly known as "AEDPA," and codified as 28 U.S.C. §§2241-2266) deals with the right of all persons in state custody, or in federal custody, to file a petition in a federal court seeking the issuance of a writ of habeas corpus. If such a writ of habeas corpus is issued by a federal court, the prisoner will be released from either state custody or federal custody (as the case may be) on the grounds that his rights guaranteed by the United States Constitution, and/or by a federal law, and/or by a treaty entered into by the United States, have been violated.

By means of AEDPA, Congress also created a series of **intentionally restrictive conditions** which must be satisfied for a prisoner to prevail in his petition seeking the issuance of a writ of habeas corpus. One such restrictive condition is AEDPA's strict and short statute of limitations; another is AEDPA's so-called "second or successive rule," which generally (but not always) bars a petitioner from filing a new habeas if he filed a prior habeas that was dismissed with prejudice.

In the instant situation, there is a previous 28 U.S.C. §2254 petition filed by petitioner (namely 00-cv-2746), that attacked the same conviction and/or sentence with one argument, namely that his counsel was allegedly ineffective because he didn't raise the criminal convictions of three prosecution witnesses during cross-examination. This claim was constitutional in nature, and was considered and dismissed on the merits.

On August 9, 2006, petitioner filed a petition in this court seeking his release from state custody based on the sole claim that exculpatory evidence was improperly removed from the scene of the crime. He claims he first became aware of these facts on May 15,

2006, as a result of an investigation into his case conducted by a private investigator whose services petitioner had retained.

Assuming, for the sake of argument, that the police on the scene maliciously tampered with evidence, this is clearly a claim that petitioner's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA. To the extent that petitioner is arguing not that the police were malicious with regard to the crime scene, but that they were allegedly simply negligent with regard to the forensic evidence in this case, this is clearly a claim that petitioner's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA. Assuming, for the sake of argument, that the prosecution was aware of tampering with the forensic evidence, this is clearly a claim that petitioner's rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA. It is also possible that petitioner is alleging that his counsel was ineffective in his investigation of what happened at the crime scene and in his investigation into the forensic evidence of this case; this is clearly a claim that his rights guaranteed by the Fifth, Sixth and Fourteenth Amendments to the United States Constitution have been violated, for which relief is provided to prisoners by AEDPA.

The express language of AEDPA itself is strong evidence of Congressional intent that AEDPA, and ***only*** AEDPA, is available for relief from incarceration for prisoners who make an argument for release from custody based on either the United States Constitution, a federal law, or a treaty entered into by the United States, and that even where there is newly discovered evidence, "Rule 60(b) applies ... only to the extent that it is not inconsistent with (AEDPA)." Gonzalez v. Crosby, 125 S.Ct. 2641 at 2643. Accord, Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004); United States v. Baptiste, 223 F.3d 188 (3d Cir. 2000); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). This is because constitutional claims

may not be considered pursuant to Rule 60(b). Gonzalez v. Crosby, 125 S.Ct. 2641 (2005). The fact that habeas corpus relief pursuant to AEDPA is precluded by the "second or successive rule," or by any other provisions of AEDPA, does not mean that an alternative route to the same goal is available by means of a Petition pursuant to Rule 60(b). Gonzalez v. Crosby, 125 S.Ct. 2641 (2005); United States v. Baptiste, 223 F.3d 188 (3d Cir. 2000); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). The Supreme Court of the United States has held that where a prisoner files a purported Rule 60(b) motion which makes an argument based upon the United States Constitution, federal law or treaties entered into by the United States, that that purported Rule 60(b) petition is to be treated as "similar enough" (in the Supreme Court's own words) to an AEDPA claim that failure to apply the second or successive rule of AEDPA would be inconsistent with AEDPA. Gonzalez v. Crosby, 125 S.Ct. 2641 at 2643 (2005). See, also, Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004); United States v. Baptiste, 223 F.3d 188 (3d Cir. 2000); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). As the Third Circuit Court of Appeals has correctly noted, if a petitioner could, by means of such a Rule 60(b) petition, get around Congress's clear intent in adopting AEDPA, the result would be "a complete miscarriage of justice." United States v. Baptiste, 223 F.3d 188 at 190. Accord, Gonzalez v. Crosby, 125 S.Ct. 2641 (2005); Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004); In re Dorsainvil, 119 F.3d 245 (3d Cir. 1997). Accordingly, in this particular situation, we are of the view that to the extent petitioner bases his argument on Rule 60(b), it must fail.

However, to the extent that petitioner is alleging that he is actually innocent, and bases this argument upon allegedly newly discovered evidence, AEDPA provides for relief from the second or successive rule where there is newly discovered evidence which "could not have been discovered previously through the exercise of due diligence; and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no

reasonable factfinder would have found the applicant guilty of the underlying offense." 28 USC §2244 (b)(2)(B). See, Calderon v. Thompson, 523 U.S. 538 (1998). Therefore, the second or successive rule would not be a bar to bringing a habeas corpus case pursuant to AEDPA in situations involving actual innocence (assuming, for the sake of argument, that petitioner's allegations are true). Calderon v. Thompson, 523 U.S. 538 (1998). AEDPA also provides that the statute of limitations does not run out in cases attacking state custody until at least one year after this evidence of actual innocence could have first been discovered through the exercise of due diligence. 28 USC §2244(d)(1)(D). Accordingly, the statute of limitations for challenging this claim of would not expire until May 14, 2007 (assuming, for the sake of argument, that petitioner's allegations are true).

However, before this district court has jurisdiction to consider petitioner's arguments, petitioner must petition the U.S. Court of Appeals for permission for this court to consider it pursuant to 28 USC §2244(b)(3)(A).

Accordingly, this 18th Day of October, 2006, it is hereby **ORDERED** as follows:

1. This civil action is reclassified as having been filed pursuant to 28 U.S.C. §2254.
2. The instant 28 U.S.C. §2254 petition is **DISMISSED WITHOUT PREJUDICE** on the grounds that this court lacks subject matter jurisdiction over it.
3. The Clerk of the United States District Court for the Eastern District of Pennsylvania shall mark this matter as **CLOSED** in this court for all purposes, including statistics.

S/ BERLE M. SCHILLER
BERLE M. SCHILLER, U.S. District Judge